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January 24, 2002

The Honorable Donald L. Evans
Secretary of Commerce
Attention: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Silicomanganese from Kazakhstan; Petitioners? Rebuttal Comments
Regarding Market-Economy Claim

Dear Mr. Secretary:

On behalf of Petitioners, and pursuant to the notice of preliminary determination in the above-referenced investigation,¹ we are providing rebuttal comments on the letters filed by various entities -- mainly business promotion organizations and companies with business objectives in Kazakhstan (hereafter, ?Commenters?) -- in support of revoking Kazakhstan?s nonmarket-economy (?NME?) status under the antidumping law.² Our comments are necessarily brief because the short

¹ *Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan*, 66 Fed. Reg. 56,639, 56,641 (November 9, 2001).

² Letter from American Chamber of Commerce in Kazakhstan to the Honorable Donald L. Evans, Secretary of Commerce (December 10, 2001) (?ACC Letter?); Letter from the Chamber of Commerce of the United States of America to the Honorable Donald L. Evans, Secretary of Commerce (December 7, 2001) (?CCUSA Letter?); Letter from Motorola to the Honorable Donald L. Evans, Secretary of Commerce (December 7, 2001) (?Motorola Letter?); Letter from ChevronTexaco to the Honorable Donald L. Evans, Secretary of Commerce (December 7, 2001) (?ChevronTexaco Letter?); Letter from ExxonMobil to the Honorable Donald L. Evans, Secretary of Commerce (December 10, 2001) (?ExxonMobil Letter?). A Kazakh titanium and magnesium producer also filed a letter in support of revoking Kazakhstan?s NME status. Letter from Squire,

letters filed by these entities to a large degree just express a desire for the Department of Commerce (Department?) to change Kazakhstan's status and provide relatively little in the way of substantive factual information. These letters provide no basis for revoking Kazakhstan's NME status for at least three reasons.

First, the Commenters (not unlike the Kazakh respondents themselves) ask the Department to revoke Kazakhstan's NME status on the basis of "significant progress" to date "toward establishing" the "conditions of" a market economy in Kazakhstan.³ In doing so, the Commenters acknowledge that Kazakhstan is still *in transition toward becoming a market economy country*. As explained in Petitioners' prior submissions, the question under the statute is not whether there has been significant progress, or even whether the "conditions of" a market-economy are in place, but rather whether the record shows that Kazakhstan has an actual, functioning market-economy, *i.e.*, one that operates on market principles of cost and pricing structures.⁴

Second, while the Commenters conclude that Kazakhstan qualifies for revocation of its NME status under the criteria set forth in the statute, most of them do not address all of the criteria in their letters⁵ -- including the critical criteria of the level of government ownership and control of the means of production and the level of government control over prices and production (both of which

Sanders & Dempsey L.L.P., Counsel for Ust-Kamenogorsk Titanium and Magnesium Plant, to the Honorable Donald L. Evans, Secretary of Commerce (December 10, 2001) ("UKTMP Letter?"). On January 14, 2002, the International Tax & Investment Center ("ITIC?") submitted comments basically limited to the legislative tax reforms in Kazakhstan. Letter from ITIC to the Honorable Donald L. Evans, Secretary of Commerce (January 14, 2002) ("ITIC Letter?"). On December 28, 2001, Petitioners also received comments filed by the Government of Kazakhstan ("GOK?"), which apparently were filed on December 27. The ITIC and GOK letters were filed long after the due date for comments (December 10, 2001). Furthermore, the GOK's letter: (1) is unaccompanied by any documentation supporting its assertions -- many of which are contradicted by independent, documentary evidence on the record -- and (2) contains information regarding Kazakhstan's macroeconomic performance that is irrelevant.

³ See, e.g., ExxonMobil Letter (Kazakhstan has "made great strides toward . . . establishing the conditions of a market economy?"); ChevronTexaco Letter at 2 and 4 ("the Government and the country have made remarkable progress . . . in establishing the conditions of a market economy?"; "the market-based transition has progressed?"; also noting that "the work is not over yet; more reforms will be required?"); ACC Letter at 3 ("Market economy status would recognize the significant political and economic reforms made?"); Motorola Letter at 2 (also finding "significant progress" and stating that the "market-based transition" "has progressed?").

⁴ Section 771(18)(A) of the Tariff Act of 1930 (the "Act?"); 19 U.S.C. § 1677(18)(A) (2001); Letter from Verner, Lipfert, Bernhard, McPherson and Hand, Chartered, Counsel for Petitioners, to the Honorable Donald L. Evans, Secretary of Commerce, at 22-23 (August 29, 2001) ("Petitioners' August 29 Letter?").

⁵ See CCUSA Letter; ExxonMobil Letter; ChevronTexaco Letter; ITIC Letter.

remain high in Kazakhstan).⁶ The Commenters that do purport to cover each of the criteria do so in a very cursory fashion.⁷

Third, to the extent the Commenters address the statutory criteria, they do not cite any objective sources of information or provide any supporting documentation. The "information" they provide is anecdotal, subjective and certainly colored by their desire to have Kazakhstan classified as a market-economy country. In addition, the Commenters make no attempt to reconcile the extensive documentary evidence on the record (from objective sources) that contradicts many of their statements, particularly the voluminous evidence contradicting their positive descriptions of the "business climate" and state of workers' rights in Kazakhstan.⁸

Several of the Commenters seem to believe that revocation of Kazakhstan's NME status is warranted because it will encourage Kazakhstan to take the necessary steps to become a market economy and will have other perceived benefits like increasing trade.⁹ However, under the antidumping statute, the Department may not revoke Kazakhstan's NME status unless *it is* a market economy (*i.e.*, actually operates on market principles of cost and pricing structures), regardless of other benefits that might flow from granting it such status. For the reasons explained in Petitioners' prior submissions, the record shows that Kazakhstan does not qualify as a market-economy country under the statute.

Thank you for your consideration of this letter.

Very truly yours,

⁶ Section 771(18)(B)(iv) and (v) of the Act; 19 U.S.C. § 1677(18)(B)(iv) and (v) (2001).

⁷ See, e.g., Motorola Letter; UKTMP Letter.

⁸ See, e.g., Motorola Letter at 3-4; and ACC Letter at 2. ACC also claims that "most significant enterprises, including utilities, have been privatized . . ." ACC letter at 2. This claim is contradicted by information from the World Bank and the European Bank for Reconstruction and Development ("EBRD") (contained in Petitioners' prior submissions) reporting that thousands of enterprises in Kazakhstan, including in core sectors of the economy: (1) remain wholly in government hands, (2) are majority government-owned, or (3) have significant minority government ownership (that reportedly has been used by the GOK to block decisions). ACC could be improperly using the word "privatized" to refer to companies that have some portion (even a minority) portion of private ownership, as the GOK itself has apparently done.

⁹ See CCUSA Letter at 2 (treating Kazakhstan as a market economy country will "encourage Kazakhstan to remain on the course of challenging economic reforms {and} will remove an unnecessary cloud over Kazakh perception of American economic policy"); ITIC Letter at 3-4 (freeing Kazakhstan of NME status "will indeed provide a positive and powerful inducement for further reforms in Kazakhstan" and "should have a positive result on further trade and investment between both countries").

The Honorable Donald L. Evans
January 31, 2002
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William D. Kramer
Clifford E. Stevens, Jr.
VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND,
CHARTERED

901 - 15th Street, N.W.
Washington, D.C. 20005-2301

Counsel for Petitioners

cc: Jean Kemp
Brandon Farlander
Cheryl Werner
Mark A. Barnett
George Smolik

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter was served on the following parties by first-class mail, unless otherwise noted, on this 24th day of January, 2002:

John P. Maloney
O? Melveny & Myers LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109
(hand delivery)

Ritchie T. Thomas
Squire, Sanders & Dempsey LLP
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20044-0407

James J. Rouse
Exxon Mobil Corporation
2001 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Diana L. Sedney
Chevron Texaco Corporation
575 Market Street
San Francisco, CA 94105-2856

Marian Barell Nelson
Motorola
1350 I Street, N.W.
Washington, D.C. 20005-3305

Courtney Fowler
American Chamber of Commerce in Kazakhstan
531 Seyfullina Prospect, 4th Floor
Suites 414-416, 480091
Almaty, Kazakhstan

Daniel A. Witt
International Tax & Investment Center
818 Connecticut Avenue, N.W.
Suite 1009
Washington, D.C. 20006

John J. Mangan
Skadden, Arps, Slate, Meager & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Thomas R. Howell
Dewey Ballantine LLP
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4605

Thomas J. Donohue
Chamber of Commerce of the United States of America
1615 H Street N.W.
Washington, D.C. 20002-2000

Jessica A. Burdick